



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: July 17, 2009

CBCA 1089

V.I.C. ENTERPRISES, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Victor S. Carlson, President of V.I.C. Enterprises, Inc., Willow, AK, appearing for Appellant.

Glen Woodworth, Office of Regional Counsel, Department of Veterans Affairs, Anchorage, AK; and Anna Maddan, Office of the General Counsel, Department of Veterans Affairs, Palm Desert, CA, counsel for Respondent.

Before Board Judges **STERN**, **VERGILIO**, and **SHERIDAN**.

SHERIDAN, Board Judge.

By order dated February 3, 2009, the Board raised the question of whether it had jurisdiction to decide CBCA 1089. The parties were ordered to show cause why the appeal should not be dismissed for lack of jurisdiction. Appellant proffered its letter of May 21, 2006, as proof that a claim was submitted to the contracting officer. The May 21 letter in which appellant seeks \$546,000 does not contain certification language. The Board finds that it is without jurisdiction because a certified claim had not been submitted to the contracting officer.

Background

Respondent, the Department of Veterans Affairs (VA), awarded appellant, V.I.C. Enterprises, Inc. (VIC), on May 26, 2000, contract number V910P-0103-00, for the performance of burials at the Fort Richardson National Cemetery. The contract had a base year of June 1, 2000, to March 31, 2001, with four option years. Respondent exercised the options each of the four years, extending the contract to March 31, 2005. Sometime after exercising the last option year, the VA determined the requirements of the National Cemetery had changed and the agency desired to do the contract work in-house. The VA terminated the contract for its convenience on August 23, 2004, to be effective August 31, 2004. The VA also informed VIC of its right to submit a convenience termination settlement proposal.

On September 16, 2004, VIC offered to settle the matter for \$55,000, supplementing the offer with invoices. The VA audited the invoices and determined on January 21, 2005, that VIC was entitled to payment of \$26,347.40. On February 7, 2005, VIC acknowledged receipt of the “partial payment” but wrote that it had not been paid in full.

VIC alleged via a May 21, 2006, letter, that its losses had grown and that it had incurred \$546,000 in “costs” due to the nature and timing of the termination. The VA indicated a willingness to review any termination costs VIC had incurred, but stated it was unable to do so because VIC had not provided documentation to support the expenses it was requesting.

The Board received VIC’s notice of appeal on February 26, 2008, and docketed it as CBCA 1089. On February 3, 2009, the Board raised the question of whether it had jurisdiction over this matter and ordered the parties to show cause why the appeal should not be dismissed for lack of jurisdiction. The Board noted that it appeared that a certified claim had never been sent to the contracting officer.

Appellant proffered its letter of May 21, 2006, as the sole proof that it had submitted a claim to the contracting officer; however, the May 21 letter did not contain any certification language.

Appellant submitted a certified claim to the VA on March 1, 2009, in the amount of \$546,000. The contracting officer denied the claim on March 10, 2009. This decision was then appealed, and the case was docketed as CBCA 1598.

Discussion

The Contract Disputes Act (CDA) requires that a contractor make its claim in writing, submit it to the contracting officer, and provide a certification of the claim if it is for more than \$100,000. 41 U.S.C. § 605 (2006).¹ Certification of a claim of more than \$100,000 is not only a statutory requirement, but also a jurisdictional prerequisite for review of a contracting officer's decision. *Fidelity Construction Co. v. United States*, 700 F.2d 1379, 1384 (Fed. Cir. 1983); *see also W.M. Schlosser Co. v. United States*, 705 F.2d 1336 (Fed. Cir. 1983). Lack of a proper certification deprives the Board of jurisdiction to proceed on the claim. *Tecom, Inc. v. United States*, 732 F.2d 935, 937 (Fed. Cir. 1984); *W.M. Schlosser Co.*, 705 F.2d at 1338-39. Submission of a certification *after* an appeal has been filed has no legal bearing on the Board's jurisdiction, and it cannot serve to cure a lack of jurisdiction. *B & M Cillessen Construction Co. v. Department of Health & Human Services*, CBCA 931, 08-1 BCA ¶ 33,753, at 167,083 (2007); *Aylward Enterprises, Inc. v. General Services Administration*, GSBCA 16649, 06-2 BCA ¶ 33,298, at 165,128. The Board finds that appellant has failed to meet the jurisdictional prerequisite of submitting a certified claim to the contracting officer.

Decision

CBCA 1089 is **DISMISSED FOR LACK OF JURISDICTION**. CBCA 1598 remains on the Board's docket.

PATRICIA J. SHERIDAN
Board Judge

We concur:

¹ The CDA requires that "all claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision." 41 U.S.C. § 605(a). Additionally, "[f]or claims of more than \$100,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable, and that the person certifying is duly authorized to certify the claim on behalf of the contractor." *Id.* § 605(c)(1).

JAMES L. STERN
Board Judge

JOSEPH A. VERGILIO
Board Judge